

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

PRODUCT AND VENTURES	)	
INTERNATIONAL,	)	
	)	
PLAINTIFF,	)	NO. C-16-0669 YGR
	)	
VS.	)	TUESDAY, MAY 24, 2016
	)	
AXUS STATIONARY (SHANGHAI)	)	OAKLAND, CALIFORNIA
LTD., ET AL.,	)	
	)	
	)	MOTION TO DISMISS
	)	
DEFENDANTS.	)	
	)	

BEFORE THE HONORABLE YVONNE GONZALEZ ROGERS, JUDGE

**REPORTER'S TRANSCRIPT OF PROCEEDINGS**

**APPEARANCES:**

**FOR PLAINTIFF:** GAW | POE LLP  
4 EMBARCADERO CENTER, SUITE 1400  
SAN FRANCISCO, CALIFORNIA 94111  
BY: SAMUEL SONG, ESQUIRE

**FOR DEFENDANTS:** HOGAN LOVELLS  
3 EMBARCADERO CENTER, SUITE 1500  
SAN FRANCISCO, CALIFORNIA 94111  
BY: MICHELLE ALBORZ FAR, ESQUIRE

**REPORTED BY:** DIANE E. SKILLMAN, CSR 4909, RPR, FCRR  
OFFICIAL COURT REPORTER

TRANSCRIPT PRODUCED BY COMPUTER-AIDED TRANSCRIPTION

TUESDAY, MAY 24, 2016

3:35 P.M.

P R O C E E D I N G S

**THE CLERK:** WE WILL DO THE PRODUCTS AND VENTURES  
INTERNATIONAL VERSUS AXUS STATIONARY.

CALLING CIVIL ACTION 16-669 PRODUCTS AND VENTURES  
INTERNATIONAL VERSUS AXUS STATIONARY.

COUNSEL, PLEASE STATE YOUR APPEARANCES.

**MR. SONG:** GOOD AFTERNOON, YOUR HONOR. SAMUEL SONG  
FOR THE PLAINTIFF.

**MS. ALBORZFAR:** GOOD AFTERNOON, YOUR HONOR. MICHELLE  
ALBORZFAR FOR THE MOVING DEFENDANTS.

**THE COURT:** GOOD AFTERNOON. I NEED TO GRAB YOUR FILE  
REAL QUICK. I WILL BE RIGHT BACK.

(PAUSE IN THE PROCEEDINGS.)

**THE COURT:** ALL RIGHT. LET'S BEGIN.  
HOW DO I PRONOUNCE YOUR NAME?

**MS. ALBORZFAR:** ALBORZFAR.

**THE COURT:** WE'LL START WITH YOU.  
GO AHEAD.

**MS. ALBORZFAR:** THANK YOU, YOUR HONOR.  
WE MOVED TO DISMISS THIS CASE BECAUSE THE -- WE BELIEVE  
THAT THE PLAINTIFF HAS FAILED TO SATISFY THE BASIC PROCEDURAL  
REQUIREMENTS TO ALLEGE AND MAINTAIN CLAIMS IN THIS COURT. AND  
THE PLAINTIFF'S RESPONSE TO OUR MOTION IS THAT MY CLIENTS ARE  
ATTEMPTING TO EVADE LIABILITY AND GET THIS CASE GOING ON THE

1 MERITS BASED ON MERE TECHNICALITIES.

2 AND WHILE WE BELIEVE THAT DOWN THE ROAD THEY WILL BE  
3 UNABLE TO SHOW LIABILITY IN ANY EVENT, YOUR HONOR, DUE PROCESS  
4 IS NOT A MERE TECHNICALITY AND NEITHER ARE THE REQUIREMENTS  
5 AND THE RULES GOVERNING CONTRACT INTERPRETATION AND CONTRACT  
6 LIABILITY. THOSE RULES ARE THERE FOR A REASON, AND THE  
7 PLAINTIFF IS ATTEMPTING TO ARGUE THAT THOSE RULES SHOULD NOT  
8 APPLY TO THEM WITHOUT ANY BASIS FOR DOING SO.

9 **THE COURT:** WELL, THERE'S NOT NO BASIS. SO FOCUS ON  
10 THE FACTS.

11 **MS. ALBORZFAR:** YES, YOUR HONOR.

12 **THE COURT:** FOCUS ON THE ALLEGATIONS. I MEAN  
13 THAT'S -- THAT'S WHAT I HAVE TO LOOK AT. RIGHT?

14 THERE IS A TEST, AND I NEED TO LOOK AT EVERY COMPONENT OF  
15 THAT TEST AND DECIDE WHICH WEIGH IN FAVOR OF JURISDICTION AND  
16 WHICH DO NOT. AND THE ALLEGATION HERE IS THAT YOU HAVE ONE  
17 DEFENDANT WHO ENTERED INTO A CONTRACT HERE IN CALIFORNIA THAT  
18 HAD A CLAUSE WHERE THERE WAS JURISDICTION AND THAT OTHER  
19 DEFENDANTS ARE EFFECTIVELY THE ALTER EGO. THAT'S THE ISSUE.  
20 SO IT'S NOT AS IF THERE'S NO BASIS.

21 **MS. ALBORZFAR:** YOUR HONOR, THE CONTRACT ON WHICH THE  
22 PLAINTIFF ARGUES THAT THERE WAS A CONSENT TO JURISDICTION IS A  
23 CONTRACT THAT, AS YOU RECOGNIZED, EIGHT OF THE NINE NAMED  
24 DEFENDANTS AND NONE OF THE SPECIALLY-APPEARING DEFENDANTS  
25 ACTUALLY ENTERED INTO.

1           ONE OF THE PLAINTIFFS' ALLEGATIONS IS THAT THE CONTRACT  
2           WAS ENTERED INTO BY NOT ONLY THE NAMED PARTIES BUT ALSO  
3           SUBSIDIARIES AND RELATED ENTITIES OF THOSE PARTIES.

4           BUT IF YOUR HONOR LOOKS AT THE FIRST PROVISION OF THE  
5           CONTRACT AT ISSUE, WHICH IS EXHIBIT 1 TO THE COMPLAINT, IT  
6           STATES THAT THE CONTRACT WAS ENTERED INTO BETWEEN MARCO  
7           TRADING COMPANY AND SHANGHAI MARCO STATIONARY COMPANY LIMITED  
8           AND ITS SUBSIDIARIES OR OTHER RELATED COMPANIES. BUT DIRECTLY  
9           AFTER THAT CLAUSE, THERE'S A SPECIFIC CLAUSE THAT DEFINES  
10          MARCO TRADING COMPANY -- EXCUSE ME. DEFINES MARCO -- SHANGHAI  
11          MARCO AS INCLUDING ONLY SHANGHAI MARCO AND MARCO TRADING  
12          COMPANY.

13          AND THOSE ARE THE ENTITIES THAT ARE REFERRED TO THROUGHOUT  
14          THE AGREEMENT. THE REST OF THE AGREEMENT, EVERY TIME THAT AN  
15          OBLIGATION APPEARS, THE OBLIGATION IS WITH SPECIFIC REFERENCE  
16          TO SHANGHAI MARCO. AND SHANGHAI MARCO WAS SPECIFICALLY  
17          DEFINED TO ONLY INCLUDE THE TWO ENTITIES OF SHANGHAI MARCO --

18               **THE COURT:** SLOW DOWN.

19               **MS. ALBORZFAR:** YES, YOUR HONOR. I'M SORRY.

20          SHANGHAI MARCO AND MARCO TRADING COMPANY. SECTION 15 OF  
21          THE AGREEMENT IS THE DISPUTE RESOLUTION PROVISION, AND THAT'S  
22          THE SECTION THAT INCLUDES THE FORUM SELECTION CLAUSE ON WHICH  
23          THE PLAINTIFF ARGUES CONFERS JURISDICTION HERE ON  
24          NON-CONTRACTING PARTIES.

25          SECTION 15, THE VERY FIRST SENTENCE STATES: IF A DISPUTE

1 OR COMPLAINT ARISES CONCERNING THIS AGREEMENT, SHANGHAI MARCO  
2 AND PVI WILL NEGOTIATE A RESOLUTION OF THE DISPUTE, AND GOES  
3 ON TO TALK ABOUT THE DISPUTE RESOLUTION PROCEDURES THAT ARE  
4 REQUIRED.

5 THIS PROVISION SPECIFICALLY IDENTIFIES SHANGHAI MARCO AND  
6 PVI. AGAIN, YOUR HONOR, SHANGHAI MARCO IS SPECIFICALLY  
7 IDENTIFIED IN THE AGREEMENT AS INCLUDING --

8 **THE COURT:** YOU ARE MISSING THE POINT. I GET THE  
9 SIMPLE. THAT'S NOT WHERE THE ANALYSIS HAPPENS. SO YOU CAN  
10 EITHER REGURGITATE THE OBVIOUS AND I WILL MOVE ON TO THE  
11 PLAINTIFF, OR YOU CAN ATTEMPT TO INFORM THE ANALYSIS ON WHAT'S  
12 MORE COMPLICATED, WHICH IS, EVERYTHING THAT HAPPENS AFTER THE  
13 FACT WHICH IS BEING ARGUED BY IMPLICATION IS THE GROUNDS FOR  
14 JURISDICTION.

15 SO DO YOU WANT TO ADDRESS THE MORE COMPLICATED ISSUE OR  
16 SHALL I ASK FOR COMMENTS BY MR. SONG?

17 **MS. ALBORZFAR:** YES, YOUR HONOR. I WILL ADDRESS THE  
18 NEXT PLAINTIFF'S ALTER EGO LIABILITY ALLEGATIONS.

19 THE PLAINTIFF IS REQUIRED IN ORDER TO ASSERT ALTER EGO  
20 LIABILITY, THEY HAVE TO MEET TWO REQUIREMENTS. THE FIRST  
21 REQUIREMENT IS THAT THERE IS A UNITY OF INTEREST AMONGST THE  
22 VARIOUS DEFENDANTS. AND IN THIS CASE, THE PLAINTIFF RELIES ON  
23 ALLEGATIONS THAT ARE CONTRADICTED BY THE EVIDENCE THAT WE HAVE  
24 PROFFERED IN OUR PAPERS, AND ON A MOTION TO DISMISS FOR  
25 PERSONAL JURISDICTION GROUNDS, THE COURT IS ENTITLED TO RELY

1 ON THAT EVIDENCE.

2 FOR EXAMPLE, THE PLAINTIFF ALLEGES THAT THERE IS -- THERE  
3 WERE TRANSFERS OF ASSETS AMONG THE VARIOUS DEFENDANTS AND THAT  
4 THE DEFENDANTS COMMINGLE ASSETS WITH ONE ANOTHER. AND THERE'S  
5 EVIDENCE IN FRONT OF YOUR HONOR THAT SHOWS THAT THOSE  
6 ALLEGATIONS ARE NOT TRUE AND THAT EVIDENCE IS -- THAT EVIDENCE  
7 MAY BE CONSIDERED ON A MOTION TO DISMISS UNDER THESE  
8 CIRCUMSTANCES.

9 BUT THE SECOND PRONG OF THE ALTER EGO ANALYSIS IS REALLY  
10 WHERE THE PROBLEM LIES. THERE, THE PLAINTIFF HAS TO SHOW THAT  
11 AN INEQUITABLE RESULT WILL OCCUR IF THE COURT DISREGARDS --  
12 DOES NOT DISREGARD THE CORPORATE VEIL. AND HERE, THE ONLY  
13 ALLEGATION THAT PVI CAN ASSERT IS THAT IF THE COURT DOESN'T  
14 PIERCE THE CORPORATE VEIL, IT DOESN'T BELIEVE IT WILL BE ABLE  
15 TO RECOVER FROM SHANGHAI MARCO.

16 AND THIS COURT HAS SPECIFICALLY FOUND IN PRIOR CASE LAW  
17 THAT THAT'S NOT A SUFFICIENT BASIS FOR SHOWING AN INEQUITABLE  
18 RESULT UNDER ALTER EGO LIABILITY. AND, IN FACT, HERE, THE  
19 PLAINTIFF HAS NAMED SHANGHAI MARCO AS A DEFENDANT IN THIS  
20 CASE. SO OBVIOUSLY THE PLAINTIFF BELIEVES THAT THERE'S SOME  
21 MERIT TO SUING SHANGHAI MARCO IN THE CASE.

22 THE RULE THAT YOUR HONOR HAS ARTICULATED IN PRIOR CASE LAW  
23 IS IMPORTANT AND IT'S FOR A GOOD REASON. AND THE REASON IS,  
24 IF WE ADOPTED THE PLAINTIFF'S THEORY, THEN ANY TIME THE  
25 PLAINTIFF COULD CONCEIVE OF A POSSIBLE SCENARIO IN WHICH THE

1 PARTY THAT IT ENTERED INTO A CONTRACT WITH MIGHT NOT BE --  
2 THEY MIGHT NOT BE ABLE TO RECOVER FROM THAT DEFENDANT, THE  
3 PLAINTIFF COULD NAME IN LITIGATION ANY ENTITY, ANY PERSON WHO  
4 IT CAN ALLEGE HAS ANY CONCEIVABLE RELATIONSHIP WITH THE  
5 CONTRACTING PARTY. AND THAT'S NOT THE LAW. THAT'S NOT THE  
6 STANDARD.

7 **THE COURT:** SO SHOULD I ALLOW DISCOVERY,  
8 JURISDICTIONAL DISCOVERY?

9 **MS. ALBORZFAR:** WE DON'T BELIEVE, YOUR HONOR, THAT  
10 THERE IS A SUFFICIENT BASIS ALLEGED FOR JURISDICTION, BUT IF  
11 YOUR HONOR HAS ANY DOUBT ABOUT THAT, WE WOULD SUBMIT THAT,  
12 YES, JURISDICTIONAL DISCOVERY WOULD BE THE PREFERRED COURSE OF  
13 ACTION INSTEAD OF ASSERTING JURISDICTION WHERE WE MIGHT LATER  
14 DISCOVER THAT NONE EXISTED.

15 **THE COURT:** ALL RIGHT. RESPONSE.

16 **MR. SONG:** SO IT SOUNDS LIKE THE COURT IS INTERESTED  
17 IN THE ALTER EGO ALLEGATIONS.

18 **THE COURT:** AND I DON'T THINK YOU HAVE ANY -- YOU  
19 CERTAINLY DON'T MEET ANY TEST FOR DIRECT JURISDICTION.

20 **MR. SONG:** WELL --

21 **THE COURT:** WITH RESPECT TO THESE ENTITIES THAT HAVE  
22 NO TIES OR CONNECTIONS TO CALIFORNIA, EITHER GENERALLY OR  
23 SPECIFICALLY. IT'S THE ONLY HOOK YOU HAVE IS THAT CONTRACT.

24 **MR. SONG:** I DON'T NECESSARILY AGREE. I THINK AS  
25 WE'VE ARGUED, EACH OF THE DEFENDANTS IS AN EXPRESS PARTY TO

1 THE CONTRACT. THE CONTRACT ON THE FIRST PAGE SAYS THAT THE  
2 PARTIES INCLUDE SHANGHAI MARCO, MARCO TRADING COMPANY, AND ALL  
3 RELATED COMPANIES AND SUBSIDIARIES.

4 IN ADDITION TO THAT FIRST PARAGRAPH, THERE IS  
5 PARAGRAPH 18B OF THE DISTRIBUTION AGREEMENT WHICH STATES THAT  
6 THIS AGREEMENT SHALL REMAIN IN FORCE REGARDLESS OF CHANGES IN  
7 NAME, OWNERSHIP, LEGAL STATUS, OR LOCATION OF SHANGHAI MARCO,  
8 ITS PARENT COMPANY, OR ITS SUBSIDIARIES.

9 WHAT HAPPENED IN THIS CASE IS SHANGHAI MARCO CAME FIRST,  
10 WE BELIEVE, AND THEN THE INDIVIDUAL DEFENDANTS, MR. VIEGAS AND  
11 MR. XU, CREATED ALL OF THESE OTHER COMPANIES. EXACTLY WHY, WE  
12 DON'T KNOW. WE BELIEVE IT WAS FOR SOME IMPROPER PURPOSE.

13 AND THEN WHAT HAPPENED WAS THAT THESE OTHER COMPANIES,  
14 NAMELY, SHANGHAI LAIKESHENG AND LATER AXUS STATIONARY ASSUMED  
15 THE OBLIGATIONS UNDER THE DISTRIBUTION AGREEMENT FROM SHANGHAI  
16 MARCO. SO WE'VE ARGUED THAT THE OTHER DEFENDANTS ARE EXPRESS  
17 PARTIES TO THE CONTRACT.

18 IF WE ARE TALKING ABOUT PERSONAL JURISDICTION, THERE ARE  
19 TWO PRETTY STRAIGHTFORWARD THEORIES FOR THE COURT'S FINDING OF  
20 PERSONAL JURISDICTION IN THIS CASE. ONE WOULD BE CONSENT AND  
21 TWO WOULD BE SPECIFIC JURISDICTION UNDER PURPOSEFUL AVAILMENT  
22 ANALYSIS.

23 ON THE ISSUE OF CONSENT, WE FEEL THAT THE NINTH CIRCUIT  
24 LAW ON THIS AREA IS PRETTY CLEAR. THERE'S *MANETTI-FARROW*  
25 WHICH HELD THAT FEDERAL LAW APPLIES IN EVALUATING A FORUM



1 SELECTION CLAUSE. THERE'S ALSO THE NINTH CIRCUIT CASE IN *CHAN*  
2 WHICH HELD THAT AGREEING OR CONSENTING TO A FORUM SELECTION  
3 CLAUSE AMOUNTS TO A CONSENT TO PERSONAL JURISDICTION IN THAT  
4 PARTICULAR VENUE.

5 IN TERMS OF IMPUTING THE CONSENT TO THE OTHER DEFENDANTS,  
6 OTHER THAN SHANGHAI MARCO, THERE ARE THREE ALTERNATIVE WAYS  
7 THE COURT CAN FIND THAT IMPUTATION. ONE IS THE THEORY THAT I  
8 JUST DISCUSSED, THAT ALL OF THE DEFENDANTS ARE EXPRESS PARTIES  
9 TO THE CONTRACT. ANOTHER THEORY IS ONE DISCUSSED IN  
10 *MANETTI-FARROW* AS WELL, AND ALSO JUDGE ALSUP'S DECISION  
11 *ULTRATECH*. AND THAT THEORY IS THAT EVEN IF SOME OF THE  
12 DEFENDANTS WERE NOT EXPRESS PARTIES TO THE AGREEMENT, THEY ARE  
13 BOUND BECAUSE THE CLAIMS AGAINST THEM ARE QUOTE "CLOSELY  
14 RELATED" END QUOTE TO THE CONTRACTUAL RELATIONSHIP.

15 I WOULD URGE THE COURT TO TAKE A LOOK AT *ULTRATECH*. IT'S  
16 A PRETTY STRAIGHTFORWARD APPLICATION OF THAT RULE.

17 (JUDGE SNEEZED.)

18 **MR. SONG:** BLESS YOU, YOUR HONOR.

19 **THE COURT:** THANK YOU. GO AHEAD.

20 **MR. SONG:** THE ALTER EGO ALLEGATIONS -- NOT ONLY THE  
21 ALLEGATIONS BUT ALSO THE FACTS SET FORTH IN THE AFFIDAVITS,  
22 THOSE PROVIDE A THIRD ALTERNATIVE BASIS FOR IMPUTING CONSENT  
23 TO ALL OF THE DEFENDANTS IN THIS ACTION --

24 (JUDGE SNEEZED.)

25 **MR. SONG:** BLESS YOU, YOUR HONOR. I HOPE YOU ARE NOT

1 ALLERGIC TO ME.

2 **THE COURT:** NO. IT'S JUST BEEN A LONG DAY.

3 GO AHEAD.

4 **MR. SONG:** OKAY. AS TO THE ALTER EGO ALLEGATIONS  
5 THEMSELVES, WE BELIEVE THAT WE'VE SUFFICIENTLY ALLEGED AND SET  
6 FORTH ADDITIONAL FACTS IN THE AFFIDAVITS.

7 I THINK THE CALIFORNIA COURTS HAVE HELD THAT EVEN PLEADING  
8 JUST ONE FACTOR, FOR EXAMPLE, SOLE OWNERSHIP IS ENOUGH TO  
9 ESTABLISH THE FIRST PRONG OF ALTER EGO, WHICH IS UNITY OF  
10 INTEREST. AND I BELIEVE WE SET FORTH PLENTY OF FACTS  
11 DEMONSTRATING SOLE OWNERSHIP BY MR. VIEGAS AND MR. XU OVER ALL  
12 OF THE CORPORATE DEFENDANTS IN THIS CASE.

13 AS TO THE INEQUITABLE RESULT, WE DID ARGUE THAT BECAUSE  
14 SHANGHAI MARCO WAS DISSOLVED IN 2013, THE PROBLEM, IF THE  
15 COURT DOES NOT PIERCE THE CORPORATE VEIL, IS THAT THEN  
16 DEFENDANTS COULD POTENTIALLY AVOID LIABILITY COMPLETELY. AND  
17 AS THE DEFENDANTS POINTED OUT, THAT'S SOMETHING THAT HAPPENED  
18 IN THE PAST AND AXON, THE CASE THAT WE CITED, DEALT WITH  
19 SOMETHING THAT HAPPENED AFTER -- AFTER THE RELEVANT LAWSUIT  
20 WAS FILED.

21 IN THE DECLARATION THAT WE SUBMITTED, THE DECLARATION OF  
22 JULIAN RUSSELL -- JULIAN RUSSELL IS PLAINTIFF'S CORPORATE  
23 INVESTIGATOR -- HE DISCOVERED THAT STARTING IN FEBRUARY OF  
24 THIS YEAR AFTER THIS ACTION WAS FILED THAT MR. VIEGAS AND  
25 MR. XU, BOTH DEFENDANTS IN THIS ACTION, BEGAN TO DEREGISTER

1 SOME OF THEIR COMPANIES, INCLUDING ONE OF THE DEFENDANTS NAMED  
2 IN THIS ACTION. THAT'S KENPARK.

3 THIS SUGGESTS TO US THAT THIS DISSOLVING OF SOME OF THE  
4 CORPORATE DEFENDANTS IS ... MAY BE AN EFFORT TO AVOID  
5 LIABILITY IN THIS CASE. IT'S NOT JUST AN ARGUMENT THAT  
6 PLAINTIFF WON'T BE ABLE TO RECOVER THEIR LOSSES; IT'S AN  
7 ARGUMENT THAT THE DEFENDANTS ARE TRYING TO AVOID LIABILITY  
8 COMPLETELY. SO WE BELIEVE THAT CLEARLY ESTABLISHES AN  
9 INEQUITABLE RESULT JUSTIFYING THE APPLICATION OF THE ALTER EGO  
10 DOCTRINE.

11 JUST A COUPLE OF POINTS I WANTED TO ADDRESS AT FIRST.  
12 DEFENDANTS' COUNSEL SAID THAT -- ON THE PERSONAL JURISDICTION  
13 ISSUE THAT FACTS PRESENTED IN A DECLARATION THEY SUBMITTED  
14 WITH THEIR REPLY BRIEF BY MR. VIEGAS CONTRADICTS PLAINTIFF'S  
15 FACTUAL SHOWING. WELL, THE NINTH CIRCUIT STANDARD IS, IF  
16 THERE ARE FACTUAL DISPUTES IN THE AFFIDAVITS, THOSE DISPUTES  
17 MUST BE WEIGHED IN FAVOR OF THE PLAINTIFF. SO IT'S NOT -- THE  
18 TIE GOES TO THE PLAINTIFF.

19 SO IT'S -- IT'S INEFFECTUAL TO TRY TO CREATE THIS FACTUAL  
20 DISPUTE BY SUBMITTING ANOTHER DECLARATION WITH THE REPLY  
21 BRIEF.

22 **THE COURT:** AND YOUR PERSPECTIVE ON JURISDICTIONAL  
23 DISCOVERY?

24 **MR. SONG:** OH. WE BELIEVE THAT IF THE COURT IS --  
25 HAS FURTHER QUESTIONS ABOUT WHETHER JURISDICTION IS PROPER IN

1 THIS CASE, WE WOULD -- YEAH, WE WOULD ASK FOR JURISDICTIONAL  
2 DISCOVERY. AND THE DEFENDANTS AGREE.

3 **THE COURT:** WELL, I THINK GIVEN THE INTERNATIONAL  
4 IMPLICATIONS AND CONCERNS THAT I HAVE, WHEN I LOOK AT THE TEST  
5 I DO HAVE TO DO SOME WEIGHING AND SOME BALANCING, AND  
6 UNFORTUNATELY I DON'T THINK I HAVE ENOUGH TO DO THAT GIVEN THE  
7 CURRENT STATE OF THE RECORD. SO I DO THINK THAT  
8 JURISDICTIONAL DISCOVERY IS APPROPRIATE.

9 THERE ARE SOME FACTORS WHICH WEIGH IN FAVOR OF BOTH SIDES,  
10 AND I AM CONCERNED ABOUT THE DEFENDANTS SEEKING TO  
11 MANUFACTURE, IF THAT'S WHAT IT IS, CORPORATE ENTITIES TO AVOID  
12 LIABILITY. ON THE OTHER HAND, THERE ARE CONCERNS ABOUT  
13 HAULING SOMEONE IN FROM A FOREIGN COUNTRY WHO SHOULDN'T BE  
14 HERE IN THE FIRST PLACE.

15 SO UNTIL I HAVE A BETTER GRASP OF WHAT IS THERE, I THINK  
16 THAT THIS IS BETTER LEFT FOR A DAY IN THE FUTURE. AND I KNOW  
17 THAT, AT LEAST WITH RESPECT TO -- WE ARE STILL GOING THROUGH  
18 THE HAGUE CONVENTION, I THINK, RIGHT?

19 **MR. SONG:** THAT'S CORRECT AS TO SOME OF THE UNSERVED  
20 DEFENDANTS.

21 **THE COURT:** ONE OF THE DEFENDANTS. SO I AM GOING TO  
22 ORDER JURISDICTIONAL DISCOVERY.

23 HOW MUCH TIME DO YOU NEED?

24 **MR. SONG:** IT WOULD DEPEND IN PART ON HOW COOPERATIVE  
25 THE DEFENDANTS ARE. BUT PRELIMINARILY I THINK WE WOULD ASK

1 FOR THREE MONTHS IF THAT SOUNDS REASONABLE TO YOUR HONOR.

2 **THE COURT:** ALL RIGHT. SO I THINK -- I WILL ORDER  
3 JURISDICTIONAL DISCOVERY WITH AN AMENDED COMPLAINT SO THAT I  
4 KNOW WHAT IT IS YOU HAVE.

5 SO THE MOTION IS GRANTED WITH LEAVE TO AMEND EXCEPT THE  
6 MOTION TO STRIKE IS DENIED. THE MOTIONS TO STRIKE ARE RARELY,  
7 IF EVER, GRANTED. AND THE PROFFER MADE BY THE DEFENSE TO  
8 STRIKE PARAGRAPH 36, THE SECOND SENTENCE OF 41 BECAUSE THEY  
9 INCLUDE INFORMATION, OR AT LEAST ALLEGATIONS THAT THE  
10 DEFENDANT DOESN'T FRANKLY LIKE, IS NOT A BASIS FOR A RULE  
11 12(F) MOTION. SO THAT MOTION IS DENIED WITH PREJUDICE. I  
12 DON'T WANT TO SEE IT AGAIN. ALL RIGHT?

13 **MS. ALBORZFAR:** UNDERSTOOD, YOUR HONOR.

14 **THE COURT:** WHAT I WILL EXPECT THEN, IF I GIVE YOU  
15 THE SUMMER TO CONDUCT DISCOVERY, I'LL PUT YOU ON -- I'LL ORDER  
16 THAT YOUR AMENDED COMPLAINT BE FILED BY SEPTEMBER 6TH. AND  
17 THEN WE MAY GO THROUGH ANOTHER ROUND OF BRIEFING, BUT AT LEAST  
18 I WILL HAVE THE BENEFIT OF THE JURISDICTIONAL DISCOVERY.

19 **MR. SONG:** YES, YOUR HONOR.

20 NOT TO BELABOR THE ISSUE, BUT JUST SO WE CAN CRAFT A  
21 BETTER COMPLAINT FOR YOUR HONOR, IS YOUR HONOR CONCERNED WITH  
22 THE PERSONAL JURISDICTION ANALYSIS ITSELF OR RATHER THE  
23 CONNECTION BETWEEN THE DEFENDANTS WHO AREN'T SHANGHAI MARCO OR  
24 BOTH?

25 **THE COURT:** PRIMARILY THE LATTER.

1           **MR. SONG:**   THE CONNECTION.

2           **THE COURT:**   I THINK THAT IT IS A HARD SELL, ALTHOUGH  
3   I UNDERSTAND YOUR ARGUMENT, I THINK IT'S A HARD SELL GIVEN THE  
4   WEIGHING THAT I NEED TO DO TO BRING IN AN INTERNATIONAL  
5   CORPORATION ON THE BASIS OF A GENERIC CLAUSE THAT ATTACHES TO  
6   THE PRIMARY SIGNER OF THE CONTRACT.   SO I JUST NEED, I NEED  
7   MORE.   I NEED TO UNDERSTAND THOSE RELATIONSHIPS MORE, AND  
8   WHETHER OR NOT ANY OF THESE ENTITIES HAD ANYTHING TO DO WITH  
9   THIS CONTRACT.   I MEAN, IF THEY HAD SOMETHING TO DO WITH THE  
10  CONTRACT, THAT MAKES A STRONGER CASE.

11           **MR. SONG:**   I BELIEVE WE DO ALLEGE THAT, AT LEAST WITH  
12  RESPECT TO SOME OF THE DEFENDANTS.   FOR EXAMPLE, DEFENDANT  
13  KENPARK RECEIVED COMMISSION PAYMENTS IN DIRECT CONNECTION WITH  
14  THE DISTRIBUTION AGREEMENT.

15           IN ADDITION, AXUS HONG KONG WAS A SUBSIDIARY OF AXUS  
16  STATIONARY.   AXUS STATIONARY, WE ALLEGE, DIRECTLY ASSUMED THE  
17  OBLIGATIONS -- THE CONTRACTUAL OBLIGATIONS OF THE DISTRIBUTION  
18  AGREEMENT.   THESE ARE DIRECT CONNECTIONS TO SHANGHAI MARCO,  
19  YOUR HONOR.

20           AND I UNDERSTAND YOUR HONOR'S CONCERN.   THIS IS AN UNUSUAL  
21  CASE WHERE WE'VE GOT SEVEN CORPORATE ENTITIES, BUT I THINK  
22  IT'S WORTH REMEMBERING THAT WE'RE DEALING WITH CHINESE  
23  CORPORATIONS.   NOT THAT THERE'S ANYTHING INHERENTLY WRONG WITH  
24  CHINESE CORPORATIONS, BUT THINGS ARE DONE DIFFERENTLY OVER  
25  THERE.

1           IN THE UNITED STATES, YOU DON'T SEE THIS MANY RELATED  
2       CORPORATE ENTITIES CREATED WHICH ARE ESSENTIALLY RELATED, ARE  
3       UNDER ONE UMBRELLA. IN CHINA, I BELIEVE, MY UNDERSTANDING IS  
4       THAT THE LAWS ARE A LITTLE BIT DIFFERENT. IN FACT, THERE ARE  
5       SOME LAWS THAT SORT OF ENCOURAGE THE CREATION OF THESE RELATED  
6       ENTITIES ESPECIALLY IN A SITUATION WHERE YOU HAVE A PERSON  
7       FROM OUTSIDE OF CHINA COMING INTO CHINA AND CREATING  
8       BUSINESSES.

9           SO THERE'S THIS -- IT'S JUST A LITTLE BIT DIFFERENT OVER  
10      THERE. THAT'S WHAT I AM SAYING. SO I UNDERSTAND THAT IT'S A  
11      LITTLE BIT UNUSUAL, BUT --

12           **THE COURT:** ALL OF THAT CAN BE ALLEGED. IT CAN. I  
13      MEAN I HAVE THE FIRST -- YOU'VE BEEN SITTING IN HERE ALL DAY.  
14      THE FIRST CASE THAT I HAD WAS AN MDL THAT INVOLVES A NUMBER OF  
15      ASIAN COMPANIES AS WELL. WE'VE GOT SONY, PANASONIC, TOSHIBA,  
16      LIKE 18 DEFENDANTS, AND EACH OF THE NAMED DEFENDANTS HAVE  
17      MULTIPLE ENTITIES. AND THE WAY THEY DO THINGS OVER THERE  
18      DIFFERS. RIGHT?

19           SO YOU TAKE AN ANTITRUST CASE AND YOU OVERLAY THE  
20      INTERNATIONAL DIFFERENCES IN CORPORATE STRUCTURE. BUT THAT  
21      CAN BE ALLEGED. AND AT LEAST THAT PART OF IT HAS NOT BEEN  
22      ALLEGED.

23           SO IF YOU HAVE A PERSPECTIVE IN MIND ABOUT WHY IT IS THAT  
24      THESE ARE RELATED, EVEN IF IT'S IN PART ON YOUR -- OR YOUR  
25      CLIENT'S VIEW OF HOW THE CORPORATE STRUCTURE OPERATES OVER

1       THERE, WELL THEN ALLEGE IT. I DON'T HAVE THAT IN FRONT OF ME.

2               **MR. SONG:** UNDERSTOOD, YOUR HONOR.

3               **THE COURT:** ALL RIGHT?

4               AND AFTER THE NEXT ROUND WHEN I HAVE MORE, THEN I CAN DO A  
5       MORE COMPREHENSIVE ORDER AND IF WE NEED TO GO ANOTHER ROUND,  
6       WE WILL GO ANOTHER ROUND.

7               **MR. SONG:** LET'S HOPE NOT.

8               **MS. ALBORZFAR:** YOUR HONOR, WE HAD RAISED ONE MORE  
9       ISSUE IN OUR MOTION TO DISMISS AND THAT WAS SERVICE OF PROCESS  
10      AS TO ONE OF THE DEFENDANTS WHO HAS ALLEGEDLY BEEN SERVED BY  
11      RESIDES IN SHANGHAI. IF YOUR HONOR HAS ANY QUESTIONS ABOUT  
12      THAT ARGUMENT, I WOULD BE HAPPY TO ADDRESS THEM.

13              I JUST WANT TO REITERATE THAT THE PLAINTIFF IS IN THE  
14      PROCESS ALREADY OF FOLLOWING THE HAGUE CONVENTION WITH RESPECT  
15      TO EVERY OTHER DEFENDANT IN THIS CASE THAT'S LOCATED IN  
16      SHANGHAI --

17              **THE COURT:** THIS IS WITH RESPECT TO MR. VIEGAS?

18              **MS. ALBORZFAR:** YES, YOUR HONOR.

19              THE PLAINTIFF CLEARLY HAS THE MEANS TO FOLLOW THE  
20      REQUIREMENTS OF THE HAGUE CONVENTION, HAS TWO SEPARATE CHINESE  
21      LAW FIRMS THEY'VE HIRED AS LOCAL COUNSEL, AND THEY RAISED THE  
22      ISSUE THAT MR. VIEGAS IS AN AMERICAN CITIZEN, BUT THERE IS NO  
23      AUTHORITY SUPPORTING THAT AS AN EXCUSE.

24              **THE COURT:** I LOOKED FOR THAT, AND I AGREE, MR. SONG.  
25      I THINK YOU NEED TO, UNDER THE CURRENT STATE OF THE LAW, AND



1 WE TRIED TO TRACK IT DOWN ABOVE AND BEYOND YOUR BRIEFS, THAT  
2 YOU STILL NEED TO FOLLOW THE HAGUE CONVENTION EVEN IF IT'S --  
3 IRRESPECTIVE OF IT'S A UNITED STATES CITIZEN IF THEY ARE  
4 LIVING ABROAD, IT HAS TO BE FOLLOWED. THAT'S MY VIEW.

5 **MR. SONG:** I UNDERSTAND, YOUR HONOR.

6 I GUESS WE WEREN'T ARGUING THAT THE COURT ISSUE A  
7 CATEGORICAL RULE THAT U.S. CITIZENS DON'T HAVE TO BE SERVED  
8 WHEN THEY'RE RESIDING ABROAD, BUT UNDER THE CIRCUMSTANCES OF  
9 THIS CASE WHERE MR. VIEGAS IS UNDISPUTEDLY A UNITED STATES  
10 CITIZEN, HE HAS FILED TWO SEPARATE DECLARATIONS IN THIS  
11 ACTION, IS CLEARLY AWARE OF THIS CASE AND HAS HIRED COUNSEL TO  
12 REPRESENT HIM AND THE OTHER DEFENDANTS IN THIS ACTION, THAT IT  
13 WOULD SERVE NO REAL PURPOSE, AND CERTAINLY NOT THE PURPOSES OF  
14 THE HAGUE CONVENTION TO REQUIRE THE -- THAT THE HAGUE  
15 CONVENTION PROCEDURES BE FOLLOWED IN THIS CASE.

16 **MS. ALBORZFAR:** IF I MAY BRIEFLY RESPOND.

17 ADOPTING THE PLAINTIFF'S POSITION WOULD EFFECTIVELY  
18 PENALIZE FOREIGN DEFENDANTS FROM GOING THROUGH THE APPROPRIATE  
19 CHANNELS TO CHALLENGE SERVICE OF PROCESS WHEN IT'S NOT  
20 EFFECTIVE BY RETAINING CALIFORNIA COUNSEL AND MAKING A SPECIAL  
21 APPEARANCE TO CHALLENGE SERVICE.

22 THERE IS NO, AS YOUR HONOR NOTED, THERE IS SIMPLY NO  
23 AUTHORITY SUPPORTING A FAILURE TO FOLLOW THE HAGUE CONVENTION,  
24 AND THE PLAINTIFF IS DOING THAT WITH RESPECT TO EVERY OTHER  
25 DEFENDANT. THERE'S NO BASIS TO MAKE MR. VIEGAS ANY EXCEPTION

1 TO THE RULE.

2 **THE COURT:** IS THERE AN ATTORNEY'S FEES PROVISION IN  
3 THE CONTRACT?

4 **MS. ALBORZFAR:** YES, YOUR HONOR.

5 **MR. SONG:** YES, I BELIEVE THERE IS.

6 **THE COURT:** WELL, I CAN ALWAYS AWARD YOU ALL OF YOUR  
7 ATTORNEY'S FEES FOR EVERYTHING THAT YOU'VE HAD TO GO THROUGH  
8 IF HE'S TRYING TO AVOID SERVICE BY FORCING THE ADDITIONAL TIME  
9 AND PROCEDURE.

10 **MR. SONG:** I WAS JUST INVOLVED IN THAT PROCESS, AND  
11 IT IS A VERY INVOLVED PROCESS. WE RECEIVED CONFIRMATION FROM  
12 THE CHINESE MINISTRY OF JUSTICE THAT THEY'VE ACCEPTED OUR  
13 DOCUMENTS. NOW THEY NEED TO BE SENT TO THE CHINA PEOPLE'S  
14 HIGH COURT. I'M SURE YOUR HONOR IS FAMILIAR WITH THE PROCESS,  
15 BUT THERE ARE ABOUT FIVE DIFFERENT COURTS THAT HAVE TO LOOK AT  
16 THESE DOCUMENTS BEFORE THEY ACTUALLY GET SENT TO THE  
17 DEFENDANTS IN CHINA.

18 **THE COURT:** WELL, I WILL -- LET ME THINK ABOUT THAT  
19 ONE, AND I WILL ISSUE A SEPARATE ORDER WITH RESPECT TO THAT  
20 ONE. BUT I MIGHT BE INCLINED TO, ONCE YOU EFFECTUATE PROCESS  
21 AND I HAVE HIM HERE, AWARD YOU ATTORNEY'S FEES IF HE CAN'T  
22 GIVE ME A DECENT REASON FOR NOT AGREEING TO BE COOPERATIVE  
23 WHEN HE'S A UNITED STATES CITIZEN.

24 **MS. ALBORZFAR:** YOUR HONOR, I WOULD NOTE THAT THIS  
25 DISPUTE HAS BEEN A LONG TIME COMING. THE PLAINTIFF'S KNOWN

1       THERE WAS GOING TO BE A DISPUTE FOR A LONG TIME. THE PARTIES  
2       WENT THROUGH MEDIATION NEGOTIATION AND SENT AROUND DRAFT  
3       COMPLAINTS. THERE'S NO REASON WHY MR. VIEGAS COULDN'T HAVE  
4       BEEN INCLUDED IN THE INITIAL PROCEDURES FOR SERVING THE OTHER  
5       DEFENDANTS IN THE HAGUE CONVENTION. AND, IN FACT --

6               **THE COURT:** THAT ARGUMENT ACTUALLY CUTS THE OTHER  
7       WAY. IT DOESN'T HELP YOUR CLIENT.

8               **MS. ALBORZFAR:** IN TERMS OF THE COSTS, YOUR HONOR, IF  
9       ALL OF THE DOCUMENTS HAD BEEN TRANSMITTED AT THE SAME TIME  
10      LIKE THEY WERE REQUIRED TO BE UNDER THE HAGUE CONVENTION, THAT  
11      WOULD HAVE ALLEVIATED SOME OF THE CONCERNS.

12              **THE COURT:** IT DOESN'T HELP YOUR CLIENT. HE'S A  
13      UNITED STATES CITIZEN. HE ENTERED INTO A CONTRACT THAT HAS A  
14      TO FORUM SELECTION CLAUSE IN IT. IF HE WAS IN CALIFORNIA,  
15      THIS WOULD NOT BE AN ISSUE. IF HE WAS ANYWHERE IN THE UNITED  
16      STATES, THIS WOULD NOT BE AN ISSUE.

17              IF HE WANTS TO HIDE IN A FOREIGN COUNTRY WHEN HE KNOWS  
18      THAT THERE'S A DISPUTE AND DOESN'T WANT TO ACCEPT SERVICE, I  
19      WILL CONSIDER ATTORNEY'S FEES BEING AWARDED FOR THE COST OF  
20      HAVING TO DO THIS WITH RESPECT TO HIM. AND YOU LET HIM KNOW  
21      THAT.

22              **MS. ALBORZFAR:** I CERTAINLY WILL, YOUR HONOR. AND I  
23      UNDERSTAND. MY ONLY POINT IS THAT THE RULES ARE -- THE RULES  
24      HAVE BEEN PUT IN PLACE FOR A REASON, AND THERE IS NO EXCEPTION  
25      FOR AMERICAN CITIZENSHIP. BUT I DO UNDERSTAND YOUR HONOR'S

1 POINT AND I WILL PASS IT ALONG, CERTAINLY.

2 **THE COURT:** THERE ARE TWO WAYS TO PLAY BALL. IF  
3 THAT'S THE WAY HE WANTS TO PLAY, IT MAY COST HIM.

4 ALL RIGHT. I'LL ISSUE AN ORDER ON THAT ONE.

5 **MR. SONG:** YOUR HONOR, IF I MAY SPEAK JUST ONE MORE  
6 TIME. I PROMISE. JUST TWO POINTS.

7 SO IN EFFECTING SERVICE THROUGH THE HAGUE CONVENTION ARE  
8 THE OTHER DEFENDANTS, THE COPIES OF THE SUMMONS AND THE  
9 COMPLAINT WILL BE DELIVERED TO MR. VIEGAS BECAUSE SHANGHAI  
10 MARCO WAS DISSOLVED, AND THAT'S -- MR. VIEGAS IS THE PERSON TO  
11 WHOM WE SENT IT TO.

12 I WOULD ALSO ASK IF THE COURT IS INCLINED, THAT WE COULD  
13 FILE A MOTION FOR SUBSTITUTED SERVICE ON MR. VIEGAS IF THE  
14 COURT'S OPEN TO THAT. THAT WOULD BE AN ALTERNATIVE REQUEST SO  
15 WE CAN AVOID THE DELAY AND COST OF HAVING --

16 **THE COURT:** I HAVEN'T LOOKED ON THE LAW ON IT.

17 **MR. SONG:** GOT IT. OKAY.

18 **THE COURT:** BUT I'M NOT PARTICULARLY INTERESTED IN  
19 GAMESMANSHIP. I'M NOT PARTICULARLY INTERESTED IN INCREASING  
20 THE COST OF LITIGATION, ESPECIALLY WHERE THE EQUITIES SUGGEST  
21 THAT HE SHOULD ACCEPT SERVICE AND BE DONE WITH IT.

22 SO I DON'T KNOW WHAT THAT MOTION WOULD LOOK LIKE SO I'M  
23 NOT GOING TO GIVE YOU SOME KIND OF PRELIMINARY INDICATION. I  
24 THINK I'VE LET DEFENSE COUNSEL KNOW MY PERSPECTIVE ON THIS,  
25 AND WHAT I THINK AS A BUSINESSMAN MR. VIEGAS SHOULD BE DOING,

1 PERIOD. ALL RIGHT?

2 WE ARE ADJOURNED.

3 MR. SONG: THANK YOU, YOUR HONOR.

4 MS. ALBORZFAR: THANK YOU, YOUR HONOR.

5 (PROCEEDINGS CONCLUDED AT 4:07 P.M.)

6  
7 **CERTIFICATE OF REPORTER**

8 I, DIANE E. SKILLMAN, OFFICIAL REPORTER FOR THE  
9 UNITED STATES COURT, NORTHERN DISTRICT OF CALIFORNIA, HEREBY  
10 CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE  
11 RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

12  
13 

14 DIANE E. SKILLMAN, CSR 4909, RPR, FCRR

15 TUESDAY, JUNE 14, 2016  
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